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SUMMARY RECORD OF THE PUBLIC PART OF THE 1191st MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 6 March 1997, at 10 a.m.

Chairman: Mr. BANTON

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* The summary record of the closed part of the meeting appears as document CERD/C/SR.1191/Add.1.

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The meeting was called to order at 10.10 a.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 5) (continued)

Seventh periodic report of Guatemala (continued) (CERD/C/292/Add.1; HRI/CORE/1/Add.47)

1. At the invitation of the Chairman, the delegation of Guatemala resumed their places at the Committee table.

2. Mr. ABOUL-NASR commended the Government on the quality of its report and its dialogue with the Committee. Like Mr. Ahmadu, he nevertheless had one request to make, namely that when the next report was considered, the Guatemalan delegation should include one or more representatives of the indigenous population.

3. Mrs. ALTOLAGUIRRE (Guatemala) thanked the experts for their comments. She could not answer all their questions, but would make sure that the information requested was provided in the next report of Guatemala.

4. The representatives of the ethnic communities who had been contacted, admittedly at a late stage, had unfortunately not been able to accompany her, but she assured the Committee that the shortcoming would be remedied on the occasion of the next visit of the Guatemalan delegation. She then read out the provisions of a bill incorporating the offence of racial discrimination into the Penal Code and making it punishable by imprisonment.

5. With regard to the doubts expressed by members of the Committee concerning the statement that there had been no complaint or conviction relating to acts of discrimination, she pointed out that, in accordance with the rules of due process and the principle of the presumption of innocence, no one could be tried or convicted for an offence that was not provided for by law and approved in appropriate form by the Congress. It was therefore logical that the courts should not have heard any case. Moreover, no complaint had been lodged with the Inter-American Commission on Human Rights - Guatemala had signed the American Convention on Human Rights and recognized the competence of the Inter-American Court of Human Rights. Concerning the access of the Mayan population to the courts, efforts had been made over the past 10 years to provide interpreters for them in the various parts of the country. Several training programmes for court interpreters were being implemented with the support of friendly countries and the assistance of the United Nations Mission for the Verification of Human Rights in Guatemala (MINUGUA) and the United Nations Development Programme (UNDP). MINUGUA was also helping to establish legal services in the more remote areas, to introduce the indigenous languages into the judicial system in the western part of the country and to develop a professional police force. Guatemala was also deriving benefit from the services of experts sent by friendly countries and from the cooperation of the Inter-American Institute of Human Rights. In the regions where indigenous languages were spoken, priority was given to the appointment of prosecutors and judges belonging to the communities concerned.

6. The volunteer civil defence committees had been disbanded with a view to the demilitarization of civil society and MINUGUA II was entrusted, following the peace agreement, with the task of supervising that process. Furthermore, the commission of inquiry due to report on the massacres and clandestine graves had now been set up. It should be pointed out that the Agreement on Identity and Rights of Indigenous People (CERD/C/292/Add.1, para. 86) aimed to facilitate the access of members of the indigenous communities, on completely equal terms, to all spheres of government (education, culture, politics and the economy) and to institute mechanisms for the resolution of problems. Perhaps the most important development, however, was that the way was open for dialogue between the Mayan population and the other ethnic groups, not only on matters of common interest, but above all to resolve institutional problems with the agreement of the parties concerned.

7. On the issue of impunity, she explained that the problem was one of institutional underdevelopment, aggravated by an armed conflict that had led the civilian authorities to withdraw from the combat zones, which had thus been left to the military. The Government was endeavouring to restore order and civilian administration as quickly as possible in those areas. Moreover, the armed conflict had served as an excuse for the most serious human rights violations that had ever been witnessed in Guatemala, and that were also caused by irregular armed groups.

8. Regarding the incident in the Xamán community where 11 people, including an eight-year-old child, had been killed and 21 wounded, she indicated that the eight soldiers found guilty had been in prison since 7 November 1996.

9. Mr. URRUELA PRADO (Guatemala) added that the case had had considerable repercussions since the President of the Republic had acknowledged the responsibility of the State and had dismissed the Minister of Defence. That case marked the end of the policy of impunity for which the armed conflict had served as a justification.

10. Mrs. ALTOLAGUIRRE (Guatemala) informed the members of the Committee that the amparo procedure, although designed as a safeguard, unfortunately had the effect of delaying the sentencing of the guilty parties. It was intended to amend the law in order to restrict the terms of application of that type of remedy. In the case of Miguel Us Mejia and Lucía Tiu Tum, the public prosecutor had not had sufficient evidence to bring proceedings against those allegedly responsible and had been obliged to file the case on 12 July 1996. In any event, it was not a case of racial discrimination. As to the Samuel Merida case, the Government was waiting for more information about the inquiries conducted by the prosecutor's office, but it would appear that the person concerned had been the victim of attempted extortion by the Unión Revolucionaria Nacional Guatemalteca (URNG). That case highlighted the problem of abductions in Guatemala, a phenomenon which affected all segments of the population. On the question of the burglary at the headquarters of the Committee of Peasant Unity (CUC) in Quiché on 21 November 1996, no complaint had been lodged with the prosecutor's office or the police, perhaps because the victims thought that the justice and police services did not have the resources to investigate cases of theft. Furthermore, no important document of the Committee appeared to have been stolen.

11. With regard to street children and children who were neglected or homeless, a standing committee for children and youth, composed of representatives of the procurator's office, the national police and the Casa Allianza association, had been established under the Presidential Commission for Coordinating Executive Policy in the field of Human Rights (COPREDEH). Complaints of violence against street children were treated more effectively than in the past, and a number of police officers had been prosecuted and convicted.

12. Concerning threats against the Human Rights Procurator, she could inform Mr. Yutzis that the person in question had not brought a complaint but an inquiry had been conducted by the relevant services of the Procurator's Office. The question of threats was not mentioned in the Human Rights Procurator's annual report; anonymous threats were unfortunately quite common in Guatemala, but they were rarely carried out. The National Committee for the Defence of Private Property was a group that resorted to sending anonymous letters as a means of intimidating anyone it saw as a hindrance to its interests. However, the authorities were aware of the need to improve the investigative methods used to combat that regrettable practice.

13. As to the complaint concerning mass sterilization, she pointed out that the alleged incidents had not been reported to the judicial or police authorities. It would be surprising, however, if acts of such gravity had escaped the attention of the many non-governmental organizations that were keeping a close watch on the human rights situation in Guatemala, as well as of the press, which enjoyed very considerable freedom.

14. Concerning the participation of the joint bodies comprised of representatives of the Government and of the indigenous communities in making proposals for reform of the State, the peace agreement called for indigenous community representatives chosen by the Mayan communities to participate in all legal or other reforms concerning the modernization of the State. Thus, the Peace secretariat and the coordinating body representing more than 100 Mayan organizations had held their first working meeting on 25 February 1997. The Government representatives on that commission would be designated officially on 15 April 1997.

15. Mr. URRUELA PRADO (Guatemala), replying to a question from Mr. Yutzis on the restitution of land in Guatemala, said that the issue was very complex and resulted in part from the return of persons who had fled the armed conflict and whose lands had since been occupied by other people. The Government was endeavouring to resolve the matter by a variety of means, including restitution or resettlement on land purchased by the State. Under the special provisions of the peace agreement, restitution was to be made to the extent possible, when there was a valid title to property. Otherwise, the State would buy farmland on which the applicants could settle. As to refugees in Mexico, the agreement signed between the Office of the United Nations High Commissioner for Refugees and the Governments of Mexico and Nicaragua provided that 15,000 Guatemalan refugees would remain in Mexico and be given work permits, their children born in Mexico becoming Mexican citizens.

16. On the question of the redistribution of land, he thought that any form of confiscation followed by full redistribution would be arithmetically simplistic and counter-productive. In view of the high population density, plots divided up in that manner would necessarily be small and unviable. It was therefore more worthwhile to modernize the economy and develop industry in areas with a large population, emphasizing not the right of each individual to land, but the right of all to a better life. Furthermore, the practice of growing a single crop for export should be reconsidered and preference given to a more diversified type of agriculture.

17. Concerning the implementation of article 14, on the submission to the Committee of communications from private individuals, he recalled that his country had made a commitment not only to the Committee but also under the peace agreement to respect the rights of indigenous people. In accordance with that commitment, the process of ratification of the Convention was to be approved shortly by the Congress of the Republic.

18. In his view, the racial element was not, as one speaker contended, the main cause of the armed conflict in Guatemala, but a peripheral factor, since indigenous people formed the great majority of the country's population and were represented both in the armed forces and among the guerrillas. Moreover, the distribution of wealth did not trace a strictly racial dividing line.

19. Mrs. ALTOLAGUIRRE (Guatemala) explained, with regard to the application of the death penalty, that on acceding to the American Convention on Human Rights, Guatemala had not committed itself to abolishing the death penalty, but had undertaken not to extend it to other offences and to promote its abolition. However, the conditions had not been favourable to such a measure on account of the growing insecurity due to organized crime, a regrettable development which meant that public opinion was largely in favour of the retention of capital punishment. Guatemala nevertheless intended to respect the provisions of the Convention and would not fail to abolish the death penalty as soon as improved conditions of security permitted it to do so. The judicial authorities did not apply that penalty systematically and the judges and higher courts were endeavouring to observe the provisions of the international conventions and the American Convention.

20. It should also be explained that there was a phenomenon of "indigenization of poverty" in Guatemala that was due, on the one hand, to insufficient access of indigenous people to modernization and, on the other, to their attachment to their own cultural traditions and institutions. The integration of those people into national decision-making bodies therefore had to take account of that reality. Mayan community leaders were beginning, gradually but cautiously, to take up decision-making posts at the political and executive level.

21. Mr. WOLFRUM said that the developments in Guatemala seemed encouraging. However, he would like to know whether the Truth Commission charged with the clarification of human rights violations (Comisión para el esclarecimiento histórico de las violaciones a los derechos humanos) would ultimately have access to the military documents and files it needed to identify those who had ordered villages suspected of sympathizing with the guerillas to be burnt or attacked.

22. He found Mr. Urruela Prado's comments on the land issue disturbing and unconvincing. They suggested that the Guatemalan Government was not intending to apply a programme for the restitution of the land, territory and resources which had traditionally belonged to or been used by the indigenous people. The programme of economic diversification seemed unlikely to resolve that question, moreover, since indigenous people did not feel concerned by the modernization of the economy. They were, on the other hand, fundamentally attached to the land, which was an essential part of their identity.

23. Unlike Mr. Urruela Prado, he thought that the root cause of the civil war was racial discrimination. Despite its numerical size, the indigenous population played an insignificant role in economic life. It was undergoing a process of marginalization that was expressed clearly in the term "indigenization of poverty" employed by Mrs. Altolaguirre. An equitable distribution of land, access of indigenous people to education and their participation in public life, including the Parliament, were essential for bringing peace to Guatemala. Furthermore, the preservation of indigenous people's culture should not be used as a pretext for their continued marginalization.

24. Mr. CHIGOVERA, remarking that in colonial societies indigenous people were systematically dispossessed of their land by the new settlers, asked whether the process of rationalization advocated by the Government instead of an "arithmetic" redistribution of land would take account of indigenous people's right to land. Would it also take into consideration the fact that indigenous people had a special relationship with the land - their sole means and source of existence - that was unknown to the population of European origin?

25. Mr. URRUELA PRADO (Guatemala) explained that at the time of the conquest of Guatemala by the Europeans, indigenous people had been occupying only 30 per cent of the territory. The Spanish system had kept the indigenous system consisting of two forms of land ownership, one community-based and the other individual. That dual system had disappeared with the shift to coffee growing and the recognition of the right of indigenous women to own real property, innovations that had led to the break-up of the communal lands. It would be very difficult today, in his view, to reconstitute the old communal properties. On the other hand, it was possible and desirable for a new balance in the distribution of land to be established in a creative way and for various forms of production to coexist.

26. The unequal distribution of land did not reflect any racial divide and it should be pointed out that the armed conflict had started in areas for the most part inhabited by small white landowners and mestizos discontent with such injustice. It would seem that indigenous people had, for the same reasons, then followed those groups.

27. Mrs. ALTOLAGUIRRE (Guatemala) said that Government policy on the question of land could be illustrated by a number of provisions of the agreements concluded between URNG and the State of Guatemala, which in particular recognized that legislative and administrative measures were needed to allow for the protection, claiming and restitution of the land rights of indigenous people, as well as compensation for them. The difficulties

involved mainly related to the authentication of property rights and access to the procedures for upholding those rights. Although indigenous people were the principal parties concerned, other groups - for socio-economic reasons, or for reasons connected with agriculture or land tenure - were also affected.

28. The Constitution furthermore obliged the State to protect, inter alia, the land of cooperatives or indigenous communities and other land held collectively, and recognized the right of communities, including indigenous communities, to maintain the system of administration of land in their possession and belonging to them historically. The State was also required to provide land for those indigenous communities needing it for their development.

29. The Government had adopted measures and programmes to prevent indigenous people from continuing to be dispossessed of their land, in particular by suspending the rights of ownership of land subject to claims and by making provision for compensation. That marked not only a change of attitude but a policy change. The State had furthermore decided to help resolve land disputes and make legal assistance available for that purpose.

30. The Commission appointed to shed light on human rights violations could consult without any restriction all existing archives and the records of all inquiries made into human rights violations and acts of violence committed during the armed conflict, including the army archives. Although she could not guarantee that no files had disappeared, she assured the members of the Committee that the Government was doing everything in its power to enable the Commission to report without hindrance on the dramatic events that the country had experienced over a period of 36 years.

31. Mr. ABOUL-NASR said that the problem of indigenous peoples' lands was not unique to Guatemala, since it arose throughout America, and also in Australia and New Zealand, as well as in Palestine. The causes of the problem were rooted in history but its consequences were still being felt today. One should thus not speak solely of the past. Moreover, collective property rights needed to be respected just as much as rights to private property. The Guatemalan delegation had spoken of the access of indigenous people to the land, but that was not enough: they had to be able to exercise their rights to ownership of the land. That, of course, posed practical difficulties whose solution required imagination. What provision had the Government made, for example, regarding compensation? The question of land ownership in general was perhaps an issue that should be addressed within the framework of programmes relating to the Third Decade.

32. Mr. van BOVEN said he was very pleased to note that the Government of Guatemala had ratified International Labour Organization Convention No. 169, which included specific provisions concerning land and, in particular, compensation for indigenous people.

33. Mr. YUTZIS, summing up the discussion between the Committee and the Guatemalan delegation, emphasized the quality of the dialogue that had taken place and noted that the considerable task already accomplished by Guatemala augured well for the country's future, in which the international community placed great hope, even if some measures were still needed to foster national

integration, find out the truth, improve the administration of justice and strengthen the fabric of society. It was worth pointing out that about 100 persons of indigenous origin had recently been elected mayors and that the Parliament now had six indigenous members, out of a total of 80. In conclusion, he wished to thank the Guatemalan delegation for the information it had provided, and also for its frankness, which had made possible a constructive debate.

34. The CHAIRMAN expressed his thanks to the Guatemalan delegation and announced that the Committee had completed its consideration of the report of Guatemala.

The public part of the meeting was suspended at 11.55 a.m. and resumed at 12.45 p.m.

PREVENTION OF RACIAL DISCRIMINATION, INCLUDING EARLY-WARNING AND URGENT PROCEDURES (agenda item 4)

Burundi

35. Mr. ABOUL-NASR suggested that the Committee should consider all the issues relating to agenda item 4 and then draft a statement in which it would express its concern about the cases of racial discrimination and ethnic problems brought to its attention, urge the international community, including the United Nations and the specialized agencies, to intensify their efforts to find solutions to those problems, and indicate that it would examine the cases in question at its next session. The statement could be communicated to the press and included in the Committee's report.

36. The CHAIRMAN suggested adding in the statement that the Committee was ready to provide its support to activities aimed at the consolidation of peace, and at reconciliation and social reconstruction.

37. Mr. DIACONU said that, in his view, it would be wiser to take up one specific case rather than attempt in vain to cover too large a number of grave situations. The Committee might confine itself at the current session to considering the situation in Burundi.

38. Mr. ABOUL-NASR said that he agreed with Mr. Diaconu on the last point, although the Committee had little information available to it for an in-depth analysis of the case of Burundi.

39. Mr. van BOVEN said that he was not entirely satisfied with the Committee's early-warning and urgent procedures. They would have to be improved, but for that purpose the Committee needed a larger secretariat. The Committee must also not lose sight of the fact that it drew its strength from the dialogue with States parties. That point had to be stressed.

40. Mr. de GOUTTES agreed with Mr. van Boven: it was essential for the Committee to pursue the dialogue with countries in emergencies, and not be dependent on their periodic reporting.

41. Mr. WOLFRUM said he also felt that the procedures in question should be reviewed. The Committee relied heavily on the information it received about grave situations arising in the world. Regarding the Committee's statement, it should be made clear what cases were being referred to by the Committee.

42. The CHAIRMAN proposed that the officers of the Committee should examine the various suggestions after the meeting.

43. It was so decided.

The meeting rose at 1 p.m.